IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8963 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KANPUR SANYUKT KHETI KARNARI MANDALI LTD.

Versus

NATUBHAI S PANDYA

Appearance:

MR VIMAL M PATEL for the Petitioner.

MR PRABHAV A MEHTA for Petitioner No. 1

MR KISHOR M PAUL for the Respondent.

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 24/10/2001

ORAL JUDGEMENT

Rule. Mr.Kishor M. Paul waives service of rule on behalf of the respondent. With the consent of the parties, the matter is taken up for final hearing today.

The respondent has preferred an application under Section 33-C(2) of the Industrial Disputes Act. The said application was numbered as Recovery Application No.468

of 1993. The Presiding Officer, Labour Court, Surendranagar, by his Award dated 12.3.1997, allowed the said Application and passed an order for recovery of Rs.1,62,028/- in favour of the respondent. Therafter, the present petitioner filed Miscellaneous Application No.16 of 1997, for setting aside the aforesaid Award passed in Recovery Application No.468 of 1993, on the ground that the summons of the said Application was not served upon the petitioner and it was prayed that the ex parte Award may be set aside. The said Application was rejected by the order dated 17.1.2001. The aforesaid order is challenged by filing this petition.

I have heard the learned Advocates of both the sides in detail.

It is not in dispute that the original Award, which was passed in Recovery Application No.468 of 1993, is an ex parte Award and the present petitioner, unfortunately, could not remain present and lead appropriate evidence. In my view, the Labour Court should have taken a liberal view of the matter. In the facts and circumstances of the case, the petitioner should be permitted to lead evidence in the main Application. Mr.Paul, learned Advocate appearing for the respondent, has also fairly stated that if reasonable amount of costs is awarded in favour of the respondent, he has no objection if the main Application is restored on the file of the Labour Court, Surendranagar. Considering the facts and circumstances of the case, I set aside the order of the Labour Court, Surendranagar passed below Miscellaneous Application No.16 of 1997. The Award passed in Recovery Application No.468 of 1993 is also quashed and set aside. Recovery Application No.468 of 1993 is restored on the file of the Labour Court, Surendranagar. The said application may be disposed of on its own merits, latest by 31st January, 2002. The petitioner is directed to pay costs of Rs.5,000/- to the respondent on or before 9.11.2001. After the said amount is deposited before the Labour Court, the Labour Court will permit the respondent herein to withdraw the said amount without any condition. Before the main matter is taken up for hearing, the Labour Court may ensure that the amount of costs is deposited before it. If the amount of costs, quantified as above, is not paid, the Award passed in Recovery Application No.468 of 1993 shall stand. However, if the said amount is deposited, the Labour Court will proceed with the main Application, being Recovery Application No.468 of 1993, and will dispose of the same in accordance with law.

Rule is made absolute accordingly.

Certified copy of this order may be made available to the petitioner moment the order is signed.

24th October, 2001. (P.B. Majmudar, J.)

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(apj)